



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JAN 27 2017

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Florence Sebern

Denver, CO 80246

RE: MUR 6925

Dear Ms. Sebern:

On January 24, 2017, the Federal Election Commission reviewed the allegations in your complaint dated March 10, 2015, and found that on the basis of the information provided in your complaint and the responses received, there is no reason to believe Eric Heyssel, Andrew Struttman, Gabriel Schwartz, David Spreccace, Harry L. Arkin, Christopher O. Murray, Ryan R. Call, and Alexander Hornaday in his individual capacity violated the Federal Election Campaign Act of 1971, as amended. The Commission also voted to dismiss the matter against the First Congressional District Republican Central Committee and Alexander Hornaday in his official capacity as treasurer and the Colorado Republican Campaign Committee and Robert Balink in his official capacity as treasurer. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Derek H. Ross, the attorney assigned to this matter at (202) 694-1579.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

By: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosures:  
Factual and Legal Analyses

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alexander Hornaday     MUR 6925  
Gabriel Schwartz  
David Sprecace  
Harry L. Arkin  
Andrew Struttman  
Eric Heyssel  
Christopher O. Murray  
Ryan R. Call

### I. INTRODUCTION

This matter was generated by a Complaint filed on March 10, 2015, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by Respondents. It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

The Complaint alleges that on March 8, 2013, the First Congressional District Republican Central Committee ("the CD1 Committee") made a \$6,500.80 contribution to the federal account of Colorado Republican Federal Campaign Committee ("the State Party Committee") via cashier's check.<sup>1</sup> The Complaint argues that neither the CD1 Committee nor the State Party Committee reported the contribution in their respective FEC filings, and that the CD1 Committee should have registered with the Commission as a political committee in 2013 as a result of this contribution.<sup>2</sup>

<sup>1</sup> Compl. at 3 (Mar. 10, 2015). The Complaint arises out of an intra-party proceeding called a "controversy" filed with the Colorado Republican Party Executive Committee in January 2015. The Complaint attaches the Petitions of Party Controversy, which also allege various violations of party bylaws and "best practice." *Id.* at 2, Ex. B. Because the alleged party rules violations do not fall under the Commission's jurisdiction, they will not be discussed further.

<sup>2</sup> *Id.* at 2.

1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            The State Party Committee is registered with the Commission as a state party committee.<sup>3</sup>

3    The CD1 Committee registered with the Commission as a subordinate committee of the State  
4    Party Committee on October 14, 2014.<sup>4</sup>

5            The Responses acknowledge that on March 8, 2013, the CD1 Committee gave a  
6    \$6,500.80 cashier's check to the State Party Committee, but they deny any violations.<sup>5</sup> Three  
7    days after receiving the check, the State Party Committee notified the CD1 Committee that it was  
8    refusing the contribution, and it asked the CD1 Committee to tell it how to return the check.<sup>6</sup>  
9    The State Party Committee explained that if it accepted the contribution, the CD1 Committee  
10   would have to register with the Commission as a federal political committee.<sup>7</sup> Respondents  
11   argue that because the State Party Committee refused the contribution, neither entity was  
12   required to report it to the Commission.<sup>8</sup> The Respondents do not specify the date the cashier's  
13   check was returned.<sup>9</sup>

14           The Respondents contend that the CD1 Committee was not required to register with the  
15   Commission in 2013 because, other than the \$6,500.80 contribution, the CD1 Committee did not

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<sup>3</sup>        State Party Committee Resp. at 1-2 (Apr. 15, 2015).

<sup>4</sup>        FEC Form 1, First Congressional District Republican Central Committee Statement of Organization (filed Oct. 14, 2014).

<sup>5</sup>        State Party Resp. at 2; Balink Resp. at 1 (Apr. 13, 2015).

<sup>6</sup>        State Party Resp. at 2. In support of these assertions, Respondents submitted a copy of the \$6,500.80 check, a copy of the March 11 email from the State Party to the CD1 Committee refusing the contribution, and affidavits or declarations from the individually named Respondents. *Id.* Exs. A, B.

<sup>7</sup>        *Id.* Ex. B.

<sup>8</sup>        *Id.* at 5.

<sup>9</sup>        See Ryan R. Call Aff. para. 8 (Apr. 10, 2015) (check returned in "mid-March and within [] ten days") and Alexander Hornaday Aff. para. 8 (Apr. 10, 2015) (check returned in "late March of 2013").

1 meet the registration threshold for a political committee, and because the State Party Committee  
2 refused the \$6,500.80 contribution, it did not trigger federal political committee status either.<sup>10</sup>  
3 Instead, Respondents contend that the CD1 Committee did not have to register with the  
4 Commission until it made a \$2,003 federal contribution in October 2014.<sup>11</sup>

5 A local party committee, including a subordinate committee of a state party, becomes a  
6 political committee within the meaning of the Act if it: (1) receives contributions aggregating in  
7 excess of \$5,000 during a calendar year, (2) makes payments exempted from the definition of  
8 contribution or expenditure aggregating in excess of \$5,000 during a calendar year, or (3) makes  
9 contributions aggregating in excess of \$1,000 in a calendar year.<sup>12</sup> Political committees are  
10 required to file a Statement of Organization with the Commission no later than ten days after  
11 becoming a political committee.<sup>13</sup> All registered political committees are required to file  
12 periodic reports containing, among other things, all contributions to and from other political  
13 committees during each reporting period.<sup>14</sup> A contribution is considered to be made when the  
14 contributor relinquishes control over the contribution.<sup>15</sup> A contributor relinquishes control when  
15 the contribution is delivered by the contributor to the political committee or an agent of the

<sup>10</sup> State Party Committee Resp. at 3-4.

<sup>11</sup> Prior to 2014, the State Party Committee indicates that all receipts of and expenditures made by the CD1 Committee were used for activities that do not fall under the reporting requirements of the Act, such as costs of local or state party meetings. *Id.* at 5. Although Respondents state that the CD 1 Committee filed its Statement of Organization on September 26, 2014, the actual Form 1 filed with the Commission reflects that CD 1 Committee filed its Statement on October 14, 2014, which was 13 days after the contribution that the Respondents state required them to register with the Commission. Thus, the CD 1 Committee missed the filing deadline by three days. See 52 U.S.C. § 30103(a) (“[a]ll other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 30101(4)”).

<sup>12</sup> 52 U.S.C. § 30101(4); 11 C.F.R. §§ 100.5(c), 100.14(b). The Commission generally does not apply the major purpose test to local party committees. See First GCR at 6 n.4, MUR 6683 (Fort Bend Democratic Party).

<sup>13</sup> 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d).

<sup>14</sup> 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3.

<sup>15</sup> 11 C.F.R. § 110.1(b)(6).

1 committee.<sup>16</sup> A state party committee and a subordinate party committee can make unlimited  
2 transfers of funds between each other regardless of whether they are registered with the  
3 Commission.<sup>17</sup> Those transfers, however, still count towards the reporting and registration  
4 thresholds set out in the Act.<sup>18</sup>

5 Because there is no evidence before the Commission to suggest Alexander Hornaday  
6 individually, Gabriel Schwartz, David Spreccace, Harry L. Arkin, Andrew Struttman, Eric  
7 Heyssel, Christopher O. Murray, and Ryan R. Call violated the Act, the Commission finds no  
8 reason to believe they violated the Act.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* § 102.6(a)(1)(ii).

<sup>18</sup> *Id.* § 102.6(a)(2).

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: First Congressional District Republican MUR 6925  
Central Committee and Alexander  
Hornaday and as treasurer  
Colorado Republican Federal Campaign  
Committee and Robert Balink as treasurer

### I. INTRODUCTION

This matter was generated by a Complaint filed on March 10, 2015, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Respondents. It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

The Complaint alleges that on March 8, 2013, the First Congressional District Republican Central Committee ("the CD1 Committee") made a \$6,500.80 contribution to the federal account of Colorado Republican Federal Campaign Committee ("the State Party Committee") via cashier's check.<sup>1</sup> The Complaint argues that neither the CD1 Committee nor the State Party Committee reported the contribution in their respective FEC filings, and that the CD1 Committee should have registered with the Commission as a political committee in 2013 as a result of this contribution.<sup>2</sup>

<sup>1</sup> Compl. at 3 (Mar. 10, 2015). The Complaint arises out of an intra-party proceeding called a "controversy" filed with the Colorado Republican Party Executive Committee in January 2015. The Complaint attaches the Petitions of Party Controversy, which also allege various violations of party bylaws and "best practice." *Id.* at 2, Ex. B. Because the alleged party rules violations do not fall under the Commission's jurisdiction, they will not be discussed further.

<sup>2</sup> *Id.* at 2.

II. FACTUAL AND LEGAL ANALYSIS

The State Party Committee is registered with the Commission as a state party committee.<sup>3</sup>

The CD1 Committee registered with the Commission as a subordinate committee of the State Party Committee on October 14, 2014.<sup>4</sup>

The Responses acknowledge that on March 8, 2013, the CD1 Committee gave a \$6,500.80 cashier's check to the State Party Committee, but they deny any violations.<sup>5</sup> Three days after receiving the check, the State Party Committee notified the CD1 Committee that it was refusing the contribution, and it asked the CD1 Committee to tell it how to return the check.<sup>6</sup> The State Party Committee explained that if it accepted the contribution, the CD1 Committee would have to register with the Commission as a federal political committee.<sup>7</sup> Respondents argue that because the State Party Committee refused the contribution, neither entity was required to report it to the Commission.<sup>8</sup> The Respondents do not specify the date the cashier's check was returned.<sup>9</sup>

The Respondents contend that the CD1 Committee was not required to register with the Commission in 2013 because, other than the \$6,500.80 contribution, the CD1 Committee did not meet the registration threshold for a political committee, and because the State Party Committee

<sup>3</sup> State Party Committee Resp. at 1-2 (Apr. 15, 2015).

<sup>4</sup> FEC Form 1, First Congressional District Republican Central Committee Statement of Organization (filed Oct. 14, 2014).

<sup>5</sup> State Party Resp. at 2; Balink Resp. at 1 (Apr. 13, 2015).

<sup>6</sup> State Party Resp. at 2. In support of these assertions, Respondents submitted a copy of the \$6,500.80 check, a copy of the March 11 email from the State Party to the CD1 Committee refusing the contribution, and affidavits or declarations from the individually-named Respondents. *Id.* Exs. A, B.

<sup>7</sup> *Id.* Ex. B.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> See Ryan R. Call Aff. para. 8 (Apr. 10, 2015) (check returned in "mid-March and within [ ] ten days") and Alexander Hornaday Aff. para. 8 (Apr. 10, 2015) (check returned in "late March of 2013").

1 refused the \$6,500.80 contribution, it did not trigger federal political committee status either.<sup>10</sup>

2 Instead, Respondents contend that the CD1 Committee did not have to register with the  
3 Commission until it made a \$2,003 federal contribution in October 2014.<sup>11</sup>

4 A local party committee, including a subordinate committee of a state party, becomes a  
5 political committee within the meaning of the Act if it: (1) receives contributions aggregating in  
6 excess of \$5,000 during a calendar year, (2) makes payments exempted from the definition of  
7 contribution or expenditure aggregating in excess of \$5,000 during a calendar year, or (3) makes  
8 contributions aggregating in excess of \$1,000 in a calendar year.<sup>12</sup> Political committees are  
9 required to file a Statement of Organization with the Commission no later than ten days after  
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11 periodic reports containing, among other things, all contributions to and from other political  
12 committees during each reporting period.<sup>14</sup> A contribution is considered to be made when the  
13 contributor relinquishes control over the contribution.<sup>15</sup> A contributor relinquishes control when

<sup>10</sup> State Party Resp. at 3-4.

<sup>11</sup> Prior to 2014, the State Party Committee indicates that all receipts of and expenditures made by the CD1 Committee were used for activities that do not fall under the reporting requirements of the Act, such as costs of local or state party meetings. *Id.* at 5. Although Respondents state that CD 1 Committee filed its Statement of Organization on September 26, 2014, the actual Form 1 filed with the Commission reflects that CD 1 Committee filed its Statement on October 14, 2014, which was 13 days after the contribution that the Respondents state required them to register with the Commission. Thus, the CD 1 Committee missed the filing deadline by three days. *See* 52 U.S.C. § 30103(a) (“[a]ll other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 30101(4)”).

<sup>12</sup> 52 U.S.C. § 30101(4); 11 C.F.R. §§ 100.5(c), 100.14(b). The Commission generally does not apply the major purpose test to local party committees. *See* First GCR at 6 n.4, MUR 6683 (Fort Bend Democratic Party).

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<sup>14</sup> 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3.

<sup>15</sup> 11 C.F.R. § 110.1(b)(6).



1 the contribution is delivered by the contributor to the political committee or an agent of the  
2 committee.<sup>16</sup>

3 A state party committee and a subordinate party committee can make unlimited transfers  
4 of funds between each other regardless of whether they are registered with the Commission.<sup>17</sup>  
5 Those transfers, however, still count towards the reporting and registration thresholds set out in  
6 the Act.<sup>18</sup>

7 It appears that the CD1 Committee made a contribution to the State Party Committee  
8 when it delivered the check to the State Party Committee. Because the contribution was in  
9 excess of \$1,000 in the calendar year, the CD1 Committee met the statutory definition of  
10 “political committee,” and it should have filed a Statement of Organization within ten days of the  
11 contribution and required periodic disclosure reports thereafter.

12 Even so, since it appears that the CD1 Committee may not have understood that its  
13 contribution exceeded the statutory threshold for political committee status, the State Party  
14 Committee refused it and never deposited it for that reason, and the check was returned, the  
15 Commission dismisses the allegations against the First Congressional District Republican Central  
16 Committee and Alexander Hornaday in his official capacity as treasurer consistent with its  
17 prosecutorial discretion to determine the proper ordering of its priorities and use of agency  
18 resources.<sup>19</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* § 102.6(a)(1)(ii).

<sup>18</sup> *Id.* § 102.6(a)(2).

<sup>19</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

1 As to the State Party Committee, any contribution may be returned to the contributor  
2 without being deposited within ten days of receipt of the contribution.<sup>20</sup> Here, the State Party  
3 Committee notified the CD1 Committee of its refusal to accept the donation three days after it  
4 received the contribution.<sup>21</sup> However, the State Party Committee was required to return the  
5 check to the CD1 Committee within ten days from its receipt on March 8, 2013, and there is  
6 conflicting information as to whether the State Party Committee complied with that deadline.<sup>22</sup>  
7 Notwithstanding, it is clear that the check was ultimately returned to the CD1 Committee, and the  
8 State Party Committee promptly informed the CD1 Committee that it could not accept the check  
9 without triggering registration and reporting requirements under the Act. Under these  
10 circumstances, the Commission dismisses the Complaint against the Colorado Republican  
11 Federal Campaign Committee and Robert Balink in his official capacity as treasurer consistent  
12 with its prosecutorial discretion to determine the proper ordering of its priorities and use of  
13 agency resources.<sup>23</sup>

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<sup>20</sup> 11 C.F.R. § 103.3(a).

<sup>21</sup> See State Party Resp., Ex. A, B.

<sup>22</sup> The State Party Committee submitted a sworn affidavit from its former chairman stating his belief that the donation was returned within the ten days allowed under the Act. Call Aff. para. 8. Evidence submitted by the Complainant indicates the check could have been returned in “approximately May 2013.” Compl. add. at 3 (Mar. 12, 2015). Alexander Hornaday, the former chairman of the CD1 Committee, submitted a sworn affidavit stating his belief that the check was returned “in late March of 2013.” Hornaday Aff. para. 8.

<sup>23</sup> See *Heckler*, 470 U.S. at 831-32.